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May 16, 2008

The Honorable Charles Terreni
Chief Clerk of the Commission
Public Service Commission of South Carolina
Post Office Drawer 11649
Columbia, South Carolina 29211

Re: In the Matter of Petition for Approval of Nextel South Corp.'s Adoption of the Interconnection Agreement Between Sprint Communications L.P., Sprint Spectrum L.P. d/b/a Sprint PCS and BellSouth Telecommunications, Inc. d/b/a AT&T South Carolina, d/b/a AT&T Southeast
Docket No. 2007-255-C

In the Matter of Petition for Approval of NPCR, Inc. d/b/a Nextel Partners' Adoption of the Interconnection Agreement Between Sprint Communications L.P./ Sprint Spectrum L.P. d/b/a Sprint PCS and BellSouth Telecommunications, Inc. d/b/a AT&T South Carolina, d/b/a AT&T Southeast
Docket No. 2007-256-C

Dear Mr. Terreni:

Enclosed for filing in the above-referenced matters is AT&T South Carolina's Proposed Order.

As explained in AT&T South Carolina's Brief and during oral argument, AT&T South Carolina maintains that the Commission has no jurisdiction over the Merger Commitments on which Nextel relies. Without waiving this position, and expressly reserving its rights to maintain that position on appeal or in other proceedings as appropriate, AT&T South Carolina's Proposed Order addresses those Merger Commitments in a manner that is consistent with the Commission's treatment of other Merger Commitments in the Order it issued in the recent Sprint Arbitration docket.

Finally, in its Brief and during oral argument, Nextel argued that the absence of evidence regarding costs or technical feasibility is fatal to AT&T South Carolina's position. AT&T South Carolina's Proposed Order addresses, and expressly refutes, this argument at page 9.

By copy of this letter, I am serving all parties of record with a copy of this Proposed Order as indicated on the attached Certificate of Service.

Sincerely,

Patrick W. Turner

PWT/nml
Enclosure
cc: All Parties of Record
711389

BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

IN THE MATTER OF PETITION FOR APPROVAL OF NEXTEL SOUTH CORP.'S ADOPTION OF THE INTERCONNECTION AGREEMENT BETWEEN SPRINT COMMUNICATIONS L.P., SPRINT SPECTRUM L.P. D/B/A SPRINT PCS AND BELLSOUTH TELECOMMUNICATIONS, INC. D/B/A AT&T SOUTH CAROLINA D/B/A AT&T SOUTHEAST	)	Docket No. 2007-255-C
IN THE MATTER OF PETITION FOR APPROVAL OF NPCR, INC. D/B/A NEXTEL PARTNERS' ADOPTION OF THE INTERCONNECTION AGREEMENT BETWEEN SPRINT COMMUNICATIONS L.P., SPRINT SPECTRUM L.P. D/B/A SPRINT PCS AND BELLSOUTH TELECOMMUNICATIONS, INC. D/B/A AT&T SOUTH CAROLINA D/B/A AT&T SOUTHEAST	)	Docket No. 2007-256-C

AT&T SOUTH CAROLINA'S PROPOSED ORDER

I. PROCEDURAL BACKGROUND

These consolidated matters come before the Commission upon Petitions filed by Nextel South Corp. and NPCR, Inc. d/b/a Nextel Partners (collectively "Nextel") for approval of Nextel's adoption of the existing interconnection agreement between BellSouth Telecommunications, Inc. d/b/a AT&T South Carolina ("AT&T South

Carolina") and Sprint.[1] AT&T South Carolina filed its Motion to Dismiss and, in the Alternative, Answer ("Motion/Answer") on August 10, 2007, and Nextel filed its Response to the Motion/Answer on August 20, 2007. The Commission held AT&T South Carolina's Motion to Dismiss in abeyance and ordered the parties to proceed with the hearing on the merits of the case "in order to make a fully reasoned determination in this case."[2]

Upon Joint Motion of Nextel and AT&T South Carolina, the Commission entered an Order canceling the evidentiary hearing in these dockets and identifying the materials that constitute the Formal Record in this case.[3] Nextel and AT&T South Carolina submitted briefs on February 28, 2008, the Commission heard oral arguments on April 9, 2008, and Nextel and AT&T South Carolina submitted proposed orders on May 16, 2008. We have carefully reviewed these submissions, the evidence of record, and the controlling law, and this Order sets forth our rulings in these consolidated dockets.

II. FACTUAL BACKGROUND

The Sprint ICA contains negotiated terms and conditions between three parties: AT&T South Carolina on the one hand, and Sprint CLEC and Sprint PCS collectively on the other hand.[4] Sprint CLEC is a provider of wireline local exchange telecommunications services, and Sprint PCS is a provider of wireless

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1 In this Order, we refer to the interconnection agreement that Nextel wishes to adopt as the "Sprint ICA."

2 *See* Order Holding Motion to Dismiss in Abeyance, Order No. 2007-622 in Docket No. 2007-255-C (September 13, 2007); Order Holding Motion to Dismiss in Abeyance, Order No. 2007-621 in Docket No. 2007-256-C (September 13, 2007).

3 *See* Order on Procedural Motion, Order No. 2008-120 in Docket Nos. 2007-255-C and 2007-256-C (February 20, 2008).

4 *See* Ferguson Direct at 11; Sprint ICA at 1; Stipulation at pp. 1-2, ¶1.

telecommunications services.[5] When AT&T South Carolina, Sprint CLEC, and Sprint PCS negotiated and entered into the Sprint ICA, neither Sprint CLEC nor Sprint PCS had any affiliation with Nextel, and Nextel had no affiliation with either Sprint CLEC or Sprint PCS.[6]

Section 6.1 of Attachment 3 to the Sprint ICA governs reciprocal compensation for call transport and termination for: CLEC Local Traffic, ISP-Bound Traffic and Wireless Local Traffic. This provision calls for a "bill and keep" reciprocal compensation arrangement, which means that AT&T South Carolina on the one hand, and Sprint CLEC and Sprint PCS on the other hand, agreed not to charge one another for the transport and termination functions they perform when they exchange local traffic between their respective customers.[7] Specifically, the Sprint ICA states:

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5 *See* Stipulation at p. 2, ¶¶ 2-3.

6 *See* Stipulation at p. 3, ¶10.

7 *See* 47 C.F.R. §51.713(a). As the Federal Communications Commission ("FCC") has recognized, a "bill and keep" arrangement is a rational and appropriate pricing mechanism when the traffic exchanged between the carriers is roughly balanced – that is, when the traffic going from AT&T South Carolina to Sprint CLEC and Sprint PCS collectively is roughly equal to the traffic going from Sprint CLEC and Sprint PCS collectively to AT&T South Carolina. *See* 47 C.F.R. §51.713(b)("A state commission may impose bill-and-keep arrangements if the state commission determines that the amount of telecommunications traffic from one network to the other is roughly balanced with the amount of telecommunications traffic flowing in the opposite direction, and is expected to remain so . . . ."). Similarly, this Commission consistently has ruled that "bill and keep" is an appropriate pricing mechanism for reciprocal compensation purposes only when the traffic is roughly balanced. *See* Order on Arbitration, *In Re: Petition of AT&T Communications of the Southern States, Inc. for Arbitration of an Interconnection Agreement with GTE South, Inc.*, Order No. 97-211 in Docket No. 96-375-C at 12-13 (March 17, 1997)(ruling that the parties must pay one another for transport and termination "until such time as this traffic becomes roughly equal. At the time when traffic becomes roughly equal between the Parties, the Commission will consider a "Bill and Keep" methodology for use between the Parties."); Order Ruling on Arbitration, *In Re: Petition of MCImetro Access Transmission Services, LLC for Arbitration of Certain Terms and Conditions of Proposed Agreement with Farmers Telephone Cooperative, Inc., Home Telephone Co., Inc., PBT Telecom, Inc., and Hargray Telephone Company,*

> Compensation for Call Transport and Termination for CLEC Local Traffic, ISP-Bound Traffic and Wireless Local Traffic is the result of negotiation and compromise between [AT&T South Carolina], Sprint CLEC and Sprint PCS. The Parties' agreement to establish a bill and keep compensation arrangement was based upon extensive evaluation of costs incurred by each party for the termination of traffic. Specifically, Sprint PCS provided [AT&T South Carolina] a substantial cost study supporting its costs. As such the bill and keep arrangement is contingent upon the agreement by all three Parties to adhere to bill and keep. Should either Sprint CLEC or Sprint PCS opt into another interconnection arrangement with [AT&T South Carolina] pursuant to 252(i) of the Act which calls for reciprocal compensation, the bill and keep arrangement between [AT&T South Carolina] and the remaining Sprint entity shall be subject to termination or renegotiation as deemed appropriate by [AT&T South Carolina].[8]

The parties to the Sprint ICA also agreed to share equally the cost of interconnection facilities between AT&T South Carolina switches and Sprint PCS and Sprint CLEC switches within AT&T South Carolina's service area. Accordingly, the Sprint ICA provides, in pertinent part, as follows for Sprint PCS and for Sprint CLEC, respectively:

> The cost of the interconnection facilities between [AT&T South Carolina] and Sprint PCS switches within [AT&T South Carolina's] service area shall be shared on an equal basis.[9]

> For two-way interconnection trunking that carries the Parties' Local and IntraLATA Toll Traffic only, excluding Transit Traffic, and for the two-way Supergroup interconnection trunk group that carries the Parties' Local and IntraLATA Toll Traffic, plus Sprint CLEC's

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Concerning Interconnection and Resale under the Telecommunications Act of 1996, Order No. 2005-544 in Docket No. 2005-67-C at 27 (adopting a "bill and keep" arrangement because "[t]he only traffic that would be subject to reciprocal compensation . . . , in the absence of regulatory arbitrage, would be roughly balanced."); Order Ruling on Arbitration, *In Re: Petition of MCImetro Access Transmission Services, LLC for Arbitration of Certain Terms and Conditions of Proposed Agreement with Horry Telephone Cooperative, Inc. Concerning Interconnection and Resale under the Telecommunications Act of 1996*, Order No. 2006-2 in Docket No. 2005-188-C at 27 (adopting a "bill and keep" arrangement because "[t]he only traffic that would be subject to reciprocal compensation . . . , in the absence of regulatory arbitrage, would be roughly balanced.")

[8] Sprint ICA, Attachment 3, Section 6.1.

[9] Sprint ICA, Attachment 3, Section 2.3.2.

> Transit Traffic, the Parties shall be compensated for the nonrecurring and recurring charges for trunks and facilities at 50% of the applicable contractual or tariff rates for the services provided by each Party.[10]

Earlier this year, the Commission issued an Order approving an amendment to the Sprint ICA that extends its term for three years from March 20, 2007 to March 19, 2010.[11]

In these consolidated dockets, Nextel seeks an Order approving its request for adoption of the Sprint ICA.[12] Nextel "is licensed by the FCC to provide, and . . . does provide, wireless telecommunications services in the State of South Carolina."[13] Nextel "is not certificated to provide and does not provide wireline local exchange telecommunications services in the State of South Carolina."[14] Nextel, therefore, is a stand-alone wireless provider that is seeking to adopt an agreement AT&T South Carolina entered into with a wireless provider and a wireline provider collectively.

In the meantime, Nextel is operating under an interconnection agreement with AT&T South Carolina. Moreover, nothing prohibits Nextel, the Sprint parties to the Sprint ICA, and other affiliated companies from collectively seeking to negotiate a new and mutually-acceptable interconnection agreement with AT&T South Carolina.

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10 Sprint ICA, Attachment A, Section 2.9.5.1.

11 *See* Order Approving Amendment to Interconnection Agreement, *In Re: Petition of Sprint Communications Company L.P. and Sprint Spectrum L.P. DBA Sprint PCS for Arbitration of Rates, Terms and Conditions of Interconnection with BellSouth Telecommunications, Inc. DBA AT&T South Carolina DBA AT&T Southeast,* Order No. 2008-27 in Docket No. 2007-215-C (January 23, 2008).

12 *See* Respective Petitions at p. 8.

13 *See* Stipulation at p. 2, ¶¶4-5.

14 *See* Stipulation at p. 2, ¶¶4-5.

III. DISCUSSION

Nextel contends that it is entitled to adopt the Sprint ICA by virtue of Section 252(i) of the federal Telecommunications Act of 1996 ("the 1996 Act").[15] Nextel further contends that the first two AT&T Merger Commitments under the heading "Reducing Transaction Costs Associated with Interconnection Agreements" also support its request to adopt the Sprint ICA.[16] We will address Section 252(i) and the Merger Commitments separately.

A. Section 252(i) of the 1996 Act Does Not Allow Nextel to Adopt the Sprint ICA.

Section 252(i) of the 1996 Act states that "[a] local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement."[17] The FCC's rule implementing this statutory provision provides, in pertinent part, that

> An incumbent LEC shall make available without unreasonable delay to any requesting telecommunications carrier any agreement in its entirety to which the incumbent LEC is a party that is approved by a state commission pursuant to section 252 of the Act, upon the same rates, terms, and conditions as those provided in the agreement.[18]

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15 *See, e.g.,* Petition at p. 4, ¶6; Petition at Exhibit B; Felton Direct at 12-13, Exhibit MGF-5 (May 18, 2007 letter).

16 *See* Petition at ¶¶5, 10; Felton Direct at 6-8; Exhibits MGF-5 and MGF-6 of Felton Direct. The FCC's Order approving the merger of AT&T Inc. and BellSouth Corporation contains, as Appendix F, a number of commitments the FCC considered in approving the merger. *See* Memorandum Opinion and Order, *In the Matter of AT&T, Inc. and BellSouth Corporation Application for Transfer of Control*, 22 F.C.C.R. 5662 at ¶222, Appendix F (March 26, 2007)("Merger Order").

17 47 U.S.C. §252(i).

18 47 C.F.R. §51.809.

As explained below, we find that Nextel is not entitled to adopt the Sprint ICA pursuant to Section 252(i) because: (1) Nextel is not seeking to adopt the agreement "upon the same terms and conditions as those provided in the agreement;" (2) none of the relief Nextel seeks constitutes an "adoption" of the Sprint ICA as contemplated by Section 252(i); and (3) Nextel's desired adoption would violate the FCC's "all-or-nothing" adoption rule.

1. Nextel is not seeking to adopt the agreement "upon the same terms and conditions as those provided in the agreement."

The Sprint ICA contains negotiated terms and conditions between three parties: AT&T South Carolina on the one hand, and Sprint CLEC and Sprint PCS collectively on the other hand.[19] Sprint CLEC is a provider of wireline local exchange services, and Sprint PCS is a provider of wireless telecommunications services.[20] AT&T South Carolina witness Scot Ferguson testified that the Sprint ICA "addresses a unique mix of wireline and wireless items (such as traffic volume, traffic types, and facility types), and it reflects the outcome of gives and takes that would not have been made if the agreement addressed only wireline services or only wireless services."[21] Mr. Ferguson went on to provide specific examples of terms and conditions that appear in the Sprint ICA to which AT&T would not have agreed if only a stand-alone wireless company like Nextel had been involved.[22]

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19 *See* Ferguson Direct at 11; Sprint ICA at 1; Stipulation at pp. 1-2, ¶1.
20 *See* Stipulation at p. 2, ¶¶ 2-3.
21 Ferguson Direct at 11.
22 Ferguson Direct at 14.

Unlike the Sprint parties to the original agreement, Nextel is not providing wireline local exchange services in South Carolina.[23] Beyond that, Nextel cannot lawfully provide wireline local exchange services in South Carolina because it is not certificated to do so.[24] The Commission, therefore, finds that Nextel is seeking to adopt the Sprint ICA as a stand-alone wireless provider, which is not an adoption "upon the same terms and conditions as those provided in the agreement."

Nextel argues that this amounts to a finding that Nextel is not "similarly situated" to the Sprint parties to the Sprint ICA and that such a finding is not appropriate grounds for denying an adoption request.[25] Nextel suggests that denying adoption on these grounds would allow an incumbent LEC to deny adoption any time the adopting carrier's business plans or mix of services are not identical to those of the original party to the underlying agreement. Based on the specific facts of record in this particular proceeding, we disagree.

Nextel's arguments would merit serious consideration if Nextel were certificated to provide wireline services in South Carolina but, as a business decision, either decided not to do so or decided to provide a different mix of wireless and wireline services than the Sprint parties to the Sprint ICA provide. That, however, is not the case. Instead of having made business decisions to provide a different mix of services than the Sprint parties to the Sprint ICA, Nextel is legally prohibited from providing wireline services in South Carolina because it is not certificated to do so.[26] As a matter of law, therefore,

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[23] Ferguson Direct at 12; Stipulation at p. 2, ¶¶4, 5.

[24] Ferguson Direct at 13; Stipulation at p. 2, ¶¶4-5.

[25] *See, e.g.,* Nextel's Brief in Support of Nextel's Adoption of the BellSouth-Sprint ICA at pp. 15-21.

[26] *See* Stipulation at p. 2, ¶¶4-5.

Nextel cannot bring to the table any of the wireline traffic that induced AT&T South Carolina to make concessions collectively to Sprint CLEC and Sprint PCS that it would not have made to Sprint PCS alone.[27] Based on the record before us in this proceeding, therefore, we find that Nextel is not seeking adoption upon the same terms and conditions as those provided in the Sprint ICA.[28]

Finally, in its brief and during oral argument, Nextel relied heavily on subsection (b) of FCC Rule 809, which provides specific conditions under which the adoption obligations imposed by subsection (a) do not apply.[29] Nextel argued that it is entitled to adopt the Sprint ICA because AT&T South Carolina did not present proof that any of the conditions specified in subsection (b) exist. We disagree. We believe that subsection (b) of Rule 809 provides exceptions which, if proven, relieve an incumbent LEC of adoption obligations that subsection (a) otherwise would impose upon it. Subsection (b), therefore, simply does not come into play unless and until an incumbent LEC is obligated to allow adoption under subsection (a). In this case, we have found that subsection (a) does not obligate AT&T South Carolina to allow adoption in this instance because Nextel is not seeking to adopt the Sprint ICA "upon the same terms and conditions as those provided in the underlying agreement." AT&T South Carolina, therefore, is not required to present any evidence addressing subsection (b) of the Rule 809.

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27 *See* Ferguson Direct at 14.

28 As a result of the Sprint-Nextel merger, the Sprint parties to the original Sprint ICA and Nextel are now affiliated with one another. Nextel, however, has stipulated that both before and after the Sprint-Nextel merger, Nextel, Sprint CLEC, and Sprint PCS were and still are separate and distinct legal entities. Stipulation at p.3, ¶7, p. 4, ¶12. Nextel, therefore, cannot use Sprint CLEC's certificate or wireline traffic Sprint CLEC already is exchanging with AT&T South Carolina to satisfy the "same terms and conditions" requirement.

29 *See, e.g.,* Nextel's Brief at pp. 15-16; 47 C.F.R. §51.809.

2. None of the relief Nextel seeks constitutes an adoption of the Sprint ICA as contemplated by Section 252(i).

When a requesting telecommunications carrier appropriately adopts an interconnection agreement pursuant to Section 252(i), it does not become a co-party to the original agreement. Instead, it becomes a party to a second and distinct agreement. Assume, for instance, that Carrier B appropriately adopts an existing interconnection agreement between Carrier A and AT&T South Carolina. Following the adoption, there is not a single agreement with AT&T South Carolina to which Carrier A and Carrier B are co-parties – if that were the case, a breach of the agreement by Carrier A would allow AT&T South Carolina to seek redress against both Carrier A and Carrier B, and that simply is not the way adoption works. Instead, after the adoption in the example above, there is an original agreement between AT&T South Carolina and Carrier A, and there is a separate and distinct agreement between AT&T South Carolina and Carrier B that contains the same terms and conditions as the agreement between AT&T South Carolina and Carrier A.[30]

Nextel has suggested at least two forms of relief in these consolidated proceedings, neither of which constitutes an adoption of the Sprint ICA as contemplated by Section 252(i). First, Nextel suggests that it wants to "simply add Nextel as a wireless party to the Sprint-AT&T ICA."[31] That, however, is not an adoption of the Sprint ICA. Instead, that is an *amendment* of the Sprint ICA to add an additional party to the existing

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[30] *See* Ferguson Direct at 15 ("Typically, AT&T South Carolina creates "adoption papers" that have the practical effect of substituting the adopting carrier's name for the original carrier's name throughout the agreement including any amendments, thereby binding the adopting carrier to all the rates, terms and conditions contained in the original agreement. The parties then execute the adoption papers.").

[31] *See* Felton Rebuttal at 9.

agreement, and we find nothing in Section 252(i) that supports, much less requires, such an amendment.

Second, Nextel suggests creating "adoption papers that have the practical effect of substituting the Nextel entity names throughout the ICA whenever the Sprint PCS name occurs."[32] That, of course, would mean that the Sprint CLEC name would remain throughout the adopted agreement, which apparently is what Nextel intends because it states that "Sprint CLEC also stands ready, willing and able to also execute [the Sprint ICA as adopted by Nextel] as an accommodation party."[33] If that were done, Sprint CLEC would be a party to three interconnection agreements with AT&T South Carolina in the same state at the same time. That, however, is not appropriate (even if all three agreements contain the same language) because Sprint CLEC has a finite amount of local traffic, all of which is to be exchanged with AT&T South Carolina under a single interconnection agreement. Moreover, Nextel has not cited (and we have not found) any Section 252(i) jurisprudence that either recognizes the concept of an "accommodation party" as proposed by Nextel or that suggests that a single ILEC can be required to execute multiple interconnection agreements with a single CLEC within a single state.

3. Nextel's desired adoption would violate the FCC's "all-or-nothing" adoption rule.

The evidence shows that adoptions typically are implemented by way of "adoption papers" that have the practical effect of "substituting the adopting carrier's name for the original carrier's name throughout the agreement including any amendments, thereby binding the adopting carrier to all the rates, terms and conditions

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32 *Id.* at 9-10.

33 Petition at Exhibit B, p. 2 of Nextel's proposed amendment to Sprint ICA; Petition at p. 6; ¶11; Felton Direct at 8; Felton Rebuttal at 10.

contained in the original agreement."[34] Applying this industry-standard adoption process to these consolidated dockets further highlights the infirmities of Nextel's attempts to adopt the Sprint ICA.

If Nextel's name were substituted for both Sprint CLEC and Sprint PCS, portions of the adopted agreement could appear to erroneously suggest that Nextel could avail itself of provisions that apply only to CLECs. To cite but one example, Attachment 2 of the Sprint ICA allows Sprint CLEC to purchase unbundled network elements ("UNEs") from AT&T South Carolina. Substituting Nextel for Sprint CLEC would result in language that could appear to erroneously suggest that Nextel can purchase UNEs from AT&T South Carolina.[35] Nextel, however, only provides mobile wireless services in South Carolina,[36] and in its Triennial Review Remand Order, the FCC ruled that:

> Consistent with [the D.C. Circuit Court of Appeal's opinion in] USTA II, we deny access to UNEs in cases where the requesting carrier seeks to provide service exclusively in a market that is sufficiently competitive without the use of unbundling. In particular, we deny access to UNEs for the exclusive provision of mobile wireless services . . . .[37]

Nextel, therefore, cannot purchase UNEs from AT&T South Carolina, and it would be improper for the adopted agreement to suggest otherwise.

Nextel suggests that this problem could be solved by substituting Nextel for Sprint PCS while leaving all references to Sprint CLEC unchanged in the adopted agreement. As explained above, however, Sprint CLEC and Nextel are separate and distinct legal entities, and Nextel cannot use the wireline certification or the wireline

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34 Ferguson Direct at 15.

35 Ferguson Direct at 16.

36 Stipulation at pp. 2-3, ¶¶4-5.

37 *See* Order On Remand, *In the Matter of Unbundled Access to Network Elements Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 20 F.C.C.R. 2533 at ¶34 (February 4, 2005)(emphasis added).

traffic its "sister corporation" Sprint CLEC already is exchanging with AT&T South Carolina to satisfy the "same terms and conditions" requirement of Section 251(i). Additionally, this purported solution would effectively require a single ILEC to execute multiple interconnection agreements with a single CLEC within a single state which, we find, cannot be required.

Finally, Nextel has suggested that it could simply adopt only "the same wireless-applicable provisions of the Sprint-AT&T ICA that are utilized by Sprint PCS . . . ." [38] The FCC, however, has ruled that a carrier is no longer permitted to "pick and choose" the provisions in an approved agreement that it wants to adopt. Instead, the FCC has adopted

> an "all-or-nothing rule" that requires a requesting carrier seeking to avail itself of terms in an interconnection agreement to adopt the agreement in its entirety, taking all rates, terms, and conditions from the adopted agreement.[39]

Allowing Nextel to "adopt" the Sprint interconnection agreement after revising the agreement to clarify which provisions Nextel can and cannot use clearly is contrary to this FCC ruling.

B. The Commission Declines to Address the Merger Commitments in this Proceeding.

Nextel claims to rely on the first two AT&T Merger Commitments under the heading "Reducing Transaction Costs Associated with Interconnection Agreements" as the basis for its request to adopt the Sprint ICA.[40] These commitments provide that:

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38 Felton Rebuttal at 9.

39 *See* Second Report and Order, *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 19 F.C.C.R. 13494 at ¶1 (July 13, 2004)(emphasis added).

40 *See* Exhibits MGF-5 and MGF-6 of Felton Direct; Respective Petitions at ¶10.

[7.]1. The AT&T/BellSouth ILEC shall make available to any requesting telecommunications carrier any entire effective interconnection agreement, whether negotiated or arbitrated, that an AT&T/BellSouth ILEC entered into in any state in the AT&T/BellSouth 22-state ILEC operating territory, subject to state-specific pricing and performance plans and technical feasibility, and provided, further, that an AT&T/BellSouth ILEC shall not be obligated to provide pursuant to this commitment any interconnection arrangement or UNE unless it is feasible to provide, given the technical, network, and OSS attributes and limitations in, and is consistent with the laws and regulatory requirements of, the state for which the request is made.

[7.]2. The AT&T/BellSouth ILECs shall not refuse a request by a telecommunications carrier to opt into an agreement on the ground that the agreement has not been amended to reflect changes of law, provided the requesting telecommunications carrier agrees to negotiate in good faith an amendment regarding such change of law immediately after it has opted into the agreement.

As we did in the AT&T South Carolina – Sprint arbitration proceedings, we find that we have concurrent jurisdiction with the FCC to enforce these merger commitments.[41] For the following reasons, however, we decline to exercise that concurrent jurisdiction in these consolidated dockets.

Unlike the FCC's Orders that address Section 251 requirements, the FCC's *Merger Order* does not provide over-arching guidance to be applied by the states. Instead, the *Merger Order* adopts specific "conditions and commitments" that are "enforceable by the FCC . . . ."[42] We can discern no legal or policy reason that any of these specific conditions and commitments should be interpreted to mean one thing in one state and other things in other states. Moreover, we find that the FCC has a unique

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[41] *See* Order Ruling on Arbitration, *In Re: Petition of Sprint Communications Co. L.P. and Sprint Spectrum L.P. d/b/a Sprint PCS for Arbitration of Rates, Terms, and Conditions of Interconnection with BellSouth Telecommunications, Inc. d/b/a AT&T South Carolina d/b/a AT&T Southeast*, Order no. 2007-583 in Docket No. 2007-215-C (October 5, 2007).

[42] *Merger Order* (Appendix F), p. 147 (emphasis added).

and timely opportunity to provide a single interpretation of the Merger Commitments upon which Nextel relies.

On February 5, 2008, AT&T Inc. filed a Petition for Declaratory Ruling with the FCC that asks the FCC to resolve several issues that are related to positions Nextel has taken in these consolidated dockets. Nextel, for instance, purports to rely on Merger Commitment 7.1 even though it is seeking to adopt a South Carolina agreement that has been approved by this Commission. AT&T has asked the FCC to rule that "Commitment 7.1 does not apply to in-state adoptions of interconnection agreements or in any way supersede [FCC] rules governing such adoptions."[43] Nextel asserts that the restrictions that exist with respect to a traditional adoption under Section 252(i) somehow do not apply to its purported adoption under Commitment 7.1.[44]

The FCC took swift action on AT&T's Petition. On February 14, 2008 (nine days after AT&T filed its Petition), the FCC issued a Public Notice that established a February 25, 2008 deadline for interested parties to file comments on AT&T's Petition.[45] Reply comments were due March 3, 2008.

We believe that judicial economy, uniformity, and certainty are all best served by letting the FCC decide if the Merger Commitments upon which Nextel relies allow it to adopt the Sprint ICA when, in our view, Section 251(i) of the Act does not. Accordingly, although this Commission has concurrent jurisdiction to address the Merger Commitments upon which Nextel relies, we elect not to exercise that jurisdiction in light

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43 Attachment C to AT&T South Carolina's Brief at p. 2.

44 *See* Felton Direct at 9.

45 *See* Public Notice, *AT&T ILECs Petition for Declaratory Ruling*, FCC Docket No. 08-23 (Released February 14, 2008).

of the FCC's opportunity to address those Merger Commitments in deciding AT&T's Declaratory Petition.

CONCLUSION

Based on the foregoing, it is hereby ordered that:

1. AT&T South Carolina's Motion to Dismiss is denied;

2. Nextel's Petition to Adopt the Sprint ICA pursuant to Section 252(i) of the federal Act is denied; and

3. The Commission will not exercise its concurrent jurisdiction over Nextel's Petition to Adopt the Sprint ICA pursuant to the Merger Commitments and, therefore, this aspect of Nextel's Petition is dismissed without prejudice to Nextel's rights to seek relief from the FCC as appropriate.

This Order shall remain in full force and effect until further Order of the Commission.

IT IS SO ORDERED.

BY ORDER OF THE COMMISSION:

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G. O'Neal Hamilton, Chairman

ATTEST:

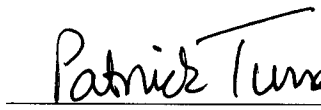
_____

C. Robert Moseley, Vice Chairman

(SEAL)

Respectfully submitted on this the 16th day of May, 2008.

BELLSOUTH TELECOMMUNICATIONS, INC.,
d/b/a AT&T SOUTH CAROLINA



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STATE OF SOUTH CAROLINA)
) CERTIFICATE OF SERVICE
COUNTY OF RICHLAND)

The undersigned, Nyla M. Laney, hereby certifies that she is employed by the Legal Department for AT&T South Carolina ("AT&T") and that she has caused AT&T South Carolina's Proposed Order in Docket Nos. 2007-255-C and 2007-256-C to be served upon the following on May 16, 2008.

Nanette S. Edwards, Esquire
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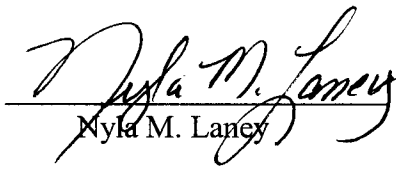

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